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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,446	04/09/2004	Scott Allan Miller III	45568-00400	1346
7590	05/30/2008	Travis C. Stephenson, Esq. MARSH FISCHMANN & BREYFOGLE LLP Suite 411 3151 South Vaughn Way Aurora, CO 80014	EXAMINER NI, SUHAN	
ART UNIT	PAPER NUMBER		2614	
MAIL DATE	DELIVERY MODE			
05/30/2008	PAPER			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/821,446	<b>Applicant(s)</b> MILLER, SCOTT ALLAN
	<b>Examiner</b> Suhan Ni	<b>Art Unit</b> 2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 February 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) 3-8, 15-19 and 27-32 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1668)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group **Art Unit 2614**.
2. This communication is responsive to the claims filed 04/09/2004.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 9-14, 21-22 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fretz (U. S. Pat. App. – 2005/0047620).

Regarding claims 1-2, 14 and 25, Fretz discloses a hearing aid comprising: a microphone (206) to receive audio inputs and provide a response signal (208); a signal processor to process the response signal (236) to generate a transducer drive signal (210), wherein a portion of one of the response signal and the transducer drive signal is received over a feedback path (202) as a feedback signal; a transducer (210) to utilize the transducer drive signal to stimulate a component of the auditory system; phase shifter logic (248) to shift the phase of the feedback signal in a predetermined amount(240), without modification of signal gain characteristics, to achieve a non-zero net phase of the feedback signal over the feedback path as claimed.

But Fretz may not specially teach an implantable signal processor as claimed. Since Fretz does not specially restrict the type of hearing aid and provide a suitable processor for certain type

hearing aid is very well known in the art, it therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide a suitable processor, such as a implantable signal processor for a implantable hearing aid, in order to provide a hearing aid for someone having special need.

Regarding claims 9, 20, 26, Fretz further discloses the hearing aid, comprising: adaptive circuitry (244) to determine the phase of the feedback signal over the feedback path.

Regarding claims 10-11, 21-24 and 33-35, Fretz may not specially teach the phase shifting range as claimed. Since Fretz does not specially restrict the phase shifting range and providing a suitable range for the hearing aid to reduce noises is very well known in the art, it therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide a phase shifter with desirable shifting range, such as 200 degree for the hearing aid as an alternate choice, in order to provide a hearing aid with desirable noise cancellation capability for specific individual and/or under specific circumstances.

Regarding claims 12-13, 23-24 and 33, Fretz further discloses the hearing aid, wherein the phase shifter logic (248) is configured to shift the phase based on the patient's ability to detect audio queues generated by the phase shift to minimize the patient's detection of the phase shift (Fig. 2) as claimed.

#### *Allowable Subject Matter*

4. Claims 3-8, 15-19 and 27-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

5. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any response to this final action should be mailed to:

**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is **(571)-272-7505**, and the number for fax machine is **(571)-273-7505**. The examiner can normally be reached on Tuesday and Thursday from 10:00 am to 8:00 pm, and may be reached on Monday, Wednesday and Friday from 10:00 am to 8:00 pm. If it is necessary, the examiner's supervisor, **Sinh N. Tran**, can be reached at **(571)-272-7564**.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is **(571)-272-2600**, or please see <http://www.uspto.gov/web/info/2600>.

/Suhan Ni/

Primary Examiner, Art Unit 2614

5/26/2008